

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1476 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHOJABHAI VASHRAMBHAI GHEELVA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. The petitioner - Bhojbhai Vashrambhai Gheelva, has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Junagadh, in exercise of powers under Section

3(2) of the PASA Act, dated August 31,1999.

#. The grounds of detention indicate that the detaining authority took into consideration 3 offences registered against the petitioner. The detaining authority also took into consideration the statements of five anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petition deserves to be allowed only on the ground of order having been passed on the basis of non-existent material considered by the detaining authority, reflecting non-application of mind on the part of the detaining authority. The detaining authority in the grounds of detention has observed that the petitioner, through his associates sells liquor, anti-social elements get together and drink liquor and behave indecently in public. They also indulge in eve teasing and behave in indecent manner with passersby. These imputations and observations in respect of the detinue do not find any support from the papers relied upon and supplied to the detinue by the detaining authority. These observations, therefore, are not based on any existing material and therefore, the order can be said to have been passed on extraneous considerations which would vitiate the order of detention. Mr. K.T. Dave, learned AGP has opposed this petition. He also could not show any material to support these observations of the detaining authority. The order is therefore based on non-existent considerations. This reflects either non-application of mind or an erroneous procedure. No affidavit-in-reply is filed on behalf of the detaining authority. The petition therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated August 31, 1999 is hereby quashed and set aside. The detinue - Bhojabhai Vashrambhai Gheelva, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-